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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re the Marriage of SUSANNA L. and KEVIN S. MOULD.	C085068
SUSANNA L. MOULD, Appellant, v. KEVIN S. MOULD, Respondent.	(Super. Ct. No. FL-12-1022)

In this appeal, Susanna L. Mould challenges a trial court order denying her motion to set aside a judgment entered on a marital settlement agreement (MSA); to increase the

spousal support obligation of her former spouse, Kevin S. Mould; and to award her attorney fees and sanctions.[1]

In denying the motion to set aside the judgment, the trial court rejected Susanna's duress claim. The trial court rejected Susanna's claim she had been physically abused by Kevin. The trial court found that "[t]here is also nothing in the record to support [Susanna's] claim that either the trial judge or the judge pro tempore pressured her into the MSA." Instead, Susanna "was treated with respect by the trial judge at all times during the course of the proceedings."

The trial court also rejected Susanna's request for increased spousal support in 10 pages of detailed analysis in its statement of decision. Taking the factors enumerated in Family Code section 4320 into account, the trial court found spousal support was reasonable and declined to order an increase.[2]

And the trial court denied Susanna's request for need-based attorney fees after it "carefully considered the respective financial circumstances and needs of the parties and, importantly, weighed all the factors under . . . sec. 4320." The statement of decision also denied separate requests by Kevin and Susanna for attorney fees as sanctions under section 271.

On appeal, Susanna alleges numerous instances of judicial bias and misconduct by judges on the Yolo County Superior Court. She asserts Judge Samuel T. McAdam (who ruled on the motion to set aside the judgment) engaged in judicial misconduct in discussing a confidential case file with Judge Janet Gaard (who entered judgment on the MSA). Susanna also alleges Judge McAdam intentionally violated judicial ethics by

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[1] As is customary in family law proceedings, we refer to the parties by their first names for the sake of clarity. (*Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

[2] Undesignated statutory references are to the Family Code.

delivering documents to only one party without providing copies to the other, attempted to coerce her into dropping her duress claim, manipulated the case against her, attempted to discredit her "with stereotypes and innuendo," and displayed "an irrational readiness to take [Kevin's] unsupported statements at face value."

Susanna also argues she was deprived of due process because Judge McAdam engaged in numerous acts of judicial misconduct involving her confidential file as well as coercing her into waiving her right to present evidence.

Susanna claims the trial court's 22-page statement of decision is deficient in numerous respects and is unsupported by substantial evidence. Specifically, she argues the trial court failed to properly consider several factors set forth in section 4320 in denying her motion to modify spousal support. She also argues the trial court's finding in support of the denial of her request for sanctions is inadequate. Fearing a continuation of "court-wide involvement in concealing" records and bias against her due to the superior court judges' "loyalty to disfavor [her] in future proceedings," Susanna requests that the case be remanded to a jurisdiction other than Yolo County.

After the completion of briefing, Susanna filed an "abandonment of issues and arguments related to [the] confidential file." Consequently, we do not consider her challenges to the trial court's order based on an assertion of judicial misconduct relating to the confidential file. As to the remaining issues, we conclude Susanna's claims of judicial bias and misconduct are noncognizable on direct appeal insofar as she requests disqualification. For that remedy, a writ of mandate is the sole appellate vehicle. As to her claim of coercion, there is no record of objection by her attorney even though she was represented by legal counsel at the time she claims the trial court engaged in coercive conduct. There is no claim her attorney was coerced or that an objection would have been futile. Moreover, there is no prejudice because she did not actually surrender any right due to the claimed coercion. Susanna's claim of judicial misconduct by Judge McAdam in ignoring important parts of her claim is forfeited for lack of adequate citation

to the appellate record of legal citation. Susanna's argument Judge McAdam was biased against her as a "victim of non-physical domestic violence" is refuted by the appellate record. Susanna cannot now complain the trial court considered her poor mental health and erratic behavior after she made it the centerpiece of her motion to set aside the judgment. We reject Susanna's claim of Judge McAdam's "predisposition" to rule in favor of Kevin as well as willingness to "manipulate" the case in his favor as unsupported by the record and noncognizable for lack of timely objection. We reject Susanna's due process claims because she received a lengthy hearing on her motion and all of her contentions were adequately considered in the statement of decision. The trial court's statement of decision is not deficient. Instead, the statement of decision is carefully reasoned and exhaustive in its analysis. In particular, the analysis regarding her entitlement to spousal support under section 4320 spanned 10 pages and indicated careful consideration of all the issues in contention. And the statement of decision adequately addressed the considerations required for ruling on a motion for need-based attorney fees. We further conclude Susanna does not demonstrate any error in the trial court's denial of her request for sanctions. Accordingly, we affirm the trial court's order.

FACTUAL AND PROCEDURAL HISTORY

The MSA

Susanna and Kevin married in 1993. The marriage produced two children. The parties separated sometime between April and June 2012. Susanna filed a petition for dissolution of marriage on June 6, 2012.

On November 3, 2014, the parties appeared in court before Judge Gaard. Judge Gaard noted Raquel Silva was present and available to serve as a settlement conference judge. Kevin's attorney opined that "[t]he case should be settled in about ten minutes" because the parties did not have a business to evaluate or other complicating factors. In response to a question from Judge Gaard regarding whether Susanna was willing "to see whether or not you can try to work something out," Susanna answered: "Your Honor, I

will, because I have been trying to settle this from the beginning. I will try." Before the hearing ended, Kevin's trial attorney called Susanna "maybe a little goofy," and Susanna accused trial counsel of consistently making false statements. However, the parties proceeded to negotiate and, with the help of the settlement judge, were able to reach agreement on terms for the MSA. The MSA was typed, signed by Susanna and Kevin, and approved by Judge Gaard.

On the record, Judge Gaard confirmed with Susanna that she read and understood everything in the MSA, did not have any questions about any of the terms of the agreement, had personally signed the MSA, and understood it was binding and enforceable. Judge Gaard confirmed the same with Kevin. The MSA was filed the same day, November 3, 2014.

On December 22, 2014, Kevin filed a motion to enter judgment on the MSA under Code of Civil Procedure section 664.6. In the motion, Kevin noted Susanna had attempted to make unilateral changes to the MSA. Susanna opposed the motion, and submitted her own proposed version of the judgment.

On January 21, 2015, Judge Gaard heard the matter. Susanna requested a delay in entry of judgment on the MSA because she could not afford health insurance until the marital residence was sold. Susanna also asserted Kevin's child support was below guideline amounts. Kevin opposed any child support because the child at issue lived solely with him and spent no time with Susanna. Judge Gaard noted the MSA reached agreement on all issues, but spousal and child support could still be modified in the future. Judge Gaard took the matter under submission.

On February 2, 2015, Judge Gaard entered judgment on the MSA with the modification Silva added to the document as the settlement officer. Susanna's requests to defer entry of judgment and attorney fees were denied. On April 6, 2015, Judge Gaard recused herself from the action after Susanna alleged Judge Gaard was biased and engaged in judicial misconduct.

Susanna's Motions to Set Aside

On July 8, 2015, Susanna filed her first motion to set aside the judgment. Her motion was premised on assertions that the judgment was altered without her knowledge, and that the judgment violated Family Code guidelines for support. Susanna also asserted demeaning treatment by Judge Gaard and Kevin's trial attorney. She also alleged she had been "under indescribabl[e] pressure from . . . Silva." Susanna summed up that "[t]he entire experience had left me traumatized."

On August 5, 2015, Susanna filed an "urgent" request "to immediately withdraw motion" to set aside the judgment. She wrote to Judge McAdam: "I respectfully request to *withdraw the motion* currently pending before Your Honor for hearing at 9:00 a.m. on August 14, 2015, *with prejudice*, effective immediately. . . . [¶] . . . [¶] The parties respectfully request the Court issue confirmation that this motion is dismissed with prejudice . . . ."

More than a year later, on November 2, 2016, Susanna filed a second motion to set aside the judgment, for modification of spousal support, and for attorney fees. Kevin opposed the motion – arguing, in part, that Susanna had not shown how setting aside the judgment would materially benefit her. On May 31, 2017, Judge McAdam filed a statement of decision denying the motion. Judge McAdam denied the motion to set aside the judgment on two separate grounds.

The first ground was that Judge McAdam found no evidence of duress or coercion. The statement of decision explains: "Focusing on [Kevin's] conduct, [Susanna] has not produced any specific and substantial evidence that he made any sort of threat against her. The claim that he engaged in a long-standing pattern of domestic violence is not supported by the evidence. (Family Code sec. 6203, 6320.) In her two declarations, [Susanna] has done nothing more than recount a series of unhappy moments in her 19 year marriage. There was never any violence. Rather, at most, [Susanna] recalled a few isolated incidents where [Kevin] raised his voice, called her names or demeaned her in

front of the children. Moreover, her recitation of the history of the divorce litigation merely reflects moments in time when [Kevin] would not necessarily agree with her own demands. . . . Her medical records also do not – in any way—support a claim that [Kevin] . . . abused her."

The second ground was that Judge McAdam found Susanna would not materially benefit from setting aside the judgment. In reaching this conclusion, Judge McAdam examined each term in the MSA to conclude the agreement was fair to Susanna. Judge McAdam also rejected Susanna's requests for modification of spousal support and for attorney fees.

Susanna filed an objection to the statement of decision. In response, the trial court set a hearing on her objections for May 18, 2017. Before the hearing could be conducted, however, Susanna's trial attorney filed a motion to disqualify all judges and commissioners serving in Yolo County. The motion to disqualify was based on Code of Civil Procedure sections 170, 170.1, and 170.3. Acting Presiding Judge Paul K. Richardson ordered the motion stricken insofar as it was directed to judges who were not assigned to the case and Judges Gaard and Kathleen M. White, who were already disqualified. Judge McAdam separately answered the motion and denied the allegations of bias and misconduct. Judge McAdam ordered the motion to disqualify stricken as to the remainder that had not been dismissed by Judge Richardson.

On May 31, 2017, Judge McAdam issued a final statement of decision and order on the motion to set aside the judgment. Susanna thereafter filed a timely notice of appeal.

DISCUSSION

I

Alleged Judicial Bias and Misconduct

Susanna alleges numerous instances of judicial bias and antipathy against her by judges on the Yolo County Superior Court. Specifically, Susanna seeks relief on direct

appeal based on her allegations Judge McAdam attempted to coerce her into dropping her duress claim, manipulated the case against her, attempted to discredit her "with stereotypes and innuendo," and displayed "an irrational readiness to take [Kevin's] unsupported statements at face value." Susanna's allegations are noncognizable insofar as they seek the remedy of disqualification in this direct appeal. The remainder of her allegations lack merit.

A.

"Slanting Proceedings"

Susanna accuses Judge McAdam of "slanting proceedings to protect Judge Gaard's reputation." She argues the basis for Judge McAdam's judicial misconduct is that he and Judge Gaard "interacted frequently and knew each other well." She also finds additional motive for judicial misconduct in the fact Judges Gaard and McAdam were appointed by the same governor. Rather than citing evidence in the record, Susanna believes her assertions are so obvious we just take judicial notice of them. "The burden is on the party seeking judicial notice to provide sufficient information to allow the court to take judicial notice. (*Willis v. State of California* (1994) 22 Cal.App.4th 287, 291 [court refused to take judicial notice of State Administrative Manual where certified copies were not provided and plaintiff failed to demonstrate manual's legal effect].)" (*Ross v. Creel Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 744.) Here, Susanna has not complied with "the rule requiring an appellant to provide a record sufficient to determine whether the asserted errors are meritorious." (*Silva v. See's Candy Shops, Inc*. (2016) 7 Cal.App.5th 235, 260.) The contention is forfeited.

In a related argument, Susanna appears to assert Judge McAdam should have recused himself by citing an opinion by the California Judges Association Ethics Committee. In the trial court, Susanna sought to disqualify the entire Yolo County bench under Code of Civil Procedure sections 170.1 and 170.3. In support, she asserted that "[t]he levels of impropriety implicated in this instance are breathtaking."

In this direct appeal, Susanna's argument regarding recusal of Judge McAdam is noncognizable. "The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding." (Code Civ. Proc., § 170.3, subd. (d).) It is well established that " '[u]nder our statutory scheme, a petition for writ of mandate is the *exclusive* method of obtaining review of a denial of a judicial disqualification motion.' " (*People v. Freeman* (2010) 47 Cal.4th 993, 1000.)

B.

Coercion by the Trial Court

Susanna next asserts Judge McAdam *attempted* to coerce her to eliminate the issue of duress from the proceedings. She premises this argument on a comment made by the trial court during a hearing on February 16, 2017.

During the February 16, 2017, hearing on the motion to set aside the judgment, Susanna was represented by Attorney Charles Jensen. Jensen addressed the court as follows:

"THE COURT: So you're not raising - - you're not seeking to reopen the college-support issue. So that one's off the table.

"All right. And so now that leaves me with one last issue here and that's an equitable redistribution of the credit debt.

"Are you seeking a remedy there?

"MR. JENSEN: Let me ask Ms - -

"THE COURT: Well, and let me put it bluntly, *Mr. Jensen, if you drop these, then we don't have to worry about duress, and then we just go to spousal support, and you deal with change of circumstances, which is a legal standard we can all understand and move forward.*

"*Duress is a heavy burden for [Susanna] here, and if - - if you want to do that to get to this equitable redistribution credit debt, and I suppose - - I suppose I'll hear the - - I've seen the papers, but - -*

"MR. JENSEN: *Thank you, your Honor.*

"THE COURT: - - *I'll hear the argument*." (Italics added.)

Next, Susanna was granted permission to address the court. The trial court and counsel clarified the issues that needed to be addressed, including duress. The trial court then confirmed duress was at issue by asking for final argument and stating: "Okay. All right. And so we have that. [¶] And then is there any additional argument if the Court were to find duress and reopen on the credit distribution, are the parties submitting on the papers there?" Both attorneys offered brief legal arguments and the trial court deemed the matter submitted.

We reject Susanna's claim of *attempted* coercion for lack of timely objection or prejudice. When the trial court made the comment Susanna now attacks on appeal for the first time, she was represented by counsel. Her attorney, Jensen, did not object to any claimed attempt by the trial court to coerce Susanna into abandoning her duress claim. Susanna does not claim her attorney was intimidated or coerced by the trial court or that a timely objection would have been futile. For lack of timely objection by her attorney or by her personally, the claim was not preserved for appellate review. "In order to preserve an issue for appeal, a party ordinarily must raise the objection in the trial court." (*In re S.C.* (2006) 138 Cal.App.4th 396, 406.)

The argument also lacks merit. "The coercion must induce the assent of the coerced party, who has no reasonable alternative to succumbing." (*In re Marriage of Baltins* (1989) 212 Cal.App.3d 66, 84.) Susanna has not demonstrated prejudice because she did not actually succumb to the coercion. She therefore has not demonstrated prejudice. (Cal. Const., art. VI, § 13 [reversal only where error has resulted in miscarriage of justice]; Code Civ. Proc., § 475 [reversal only where error is prejudicial].)

Prejudice is shown only "when there is a ' "reasonable probability" ' that the error *affected the outcome* of the trial." (*Martin-Bragg v. Moore* (2013) 219 Cal.App.4th 367, 395, italics added.) Here, the record shows the issue of duress was never removed from the trial court's consideration. Instead, the issue of duress was addressed by the trial court in the statement of decision. For lack of prejudice, we reject the argument.

C.

Scope of the Claim

Susanna next contends Judge McAdam "gave himself license to ignore or only nominally address psychological and emotional manipulation by [Kevin] and his attorneys between 2012 and 2014; the atmosphere of oppression and humiliation in Judge Gaard's courtroom in the months preceding settlement; Judge Gaard's refusal to consider [Susanna's] attorney fee requests; and her unwillingness to apply substantive law favoring [Susanna]." As a result of this alleged misconduct, Susanna claims Judge McAdam "manipulated [the] inquiry" to avoid passing judgment on Judge Gaard's prior conduct in the action.

In support of her allegation of bias, Susanna cites to the portion of the appellate record in which the statement of decision set forth a detailed analysis of whether the circumstances surrounding the settlement conference actually caused her duress. The argument is not supported with record citations establishing the alleged psychological manipulation by Kevin, humiliation by Judge Gaard, or Judge McAdam's judicial misconduct in ignoring legal issues. "When an appellant's brief makes no reference to the pages of the record where a point can be found, an appellate court need not search through the record in an effort to discover the point purportedly made. [Citations.] We can simply deem the contention to lack foundation and, thus, to be forfeited." (*In re S.C., supra,* 138 Cal.App.4th at pp. 406-407.) We deem the argument forfeited for lack of record citations.

Susanna also offers no legal authority in support of her claim that the trial court's analysis was erroneously narrow. The single case cited in the opening brief is *Catchpole v. Brannon* (1995) 36 Cal.App.4th 237. *Catchpole* was disapproved by the California Supreme Court in *People v. Freeman, supra,* 47 Cal.4th at page 1006, footnote 4. Even apart from questions regarding the continuing validity of *Catchpole*, it did not involve any claim or analysis of duress. As this court recently noted, " 'It is axiomatic that cases are not authority for propositions not considered.' " (*Howard Jarvis Taxpayers Assn. v. Newsom* (2019) 39 Cal.App.5th 158, 169, quoting *People v. Ault* (2004) 33 Cal.4th 1250, 1268, fn. 10.) Thus, Susanna's single legal citation does not support her duress argument. For lack of authority in support of the argument, the contention is deemed forfeited. (*In re S.C., supra,* 138 Cal.App.4th at p. 408.)

D.

"Non-physical Domestic Violence"

Susanna next claims the trial court displayed "bias against [her] as [a] victim of non-physical domestic violence." Susanna bases her claim on the italicized portion of the following in the trial court's statement of decision:

"Focusing on [Kevin's] conduct, [Susanna] has not produced any specific and substantial evidence that he made any sort of threat against her. The claim that he engaged in a long-standing pattern of domestic violence is not supported by the evidence. (. . . sec. 6203, 6320.) In her two declarations, [*Susanna*] *has done nothing more than recount a series of unhappy moments in her 19 year marriage. There was never any violence. Rather, at most,* [*Susanna*] *recalled a few isolated incidents where* [*Kevin*] *raised his voice, called her names or demeaned her in front of the children*. *Moreover, her recitation of the history of the divorce litigation merely reflects moments in time when* [*Kevin*] *would not necessarily agree with her own demands*. . . . Her medical records also do not – in any way – support a claim that [Kevin] . . . abused her." (Italics added.)

The record – and this portion of the statement of decision, in particular – does not support Susanna's underlying premise that she is a victim of "non-physical domestic violence." The portion of the statement of decision to which Susanna points as an indication of bias constitutes the factual findings of the trial court regarding her duress claim. The trial court's factual findings are supported by the e-mail exchanges between the parties in which Kevin sent nonthreatening e-mails even when insulted by Susanna, a police report made by Kevin after Susanna asked one of their children to retrieve an item from his house, and medical records that are devoid of indication Susanna suffered from abuse by Kevin. Substantial evidence supports the trial court's factual findings that Susanna had not proven any abuse by Kevin.

Although Susanna asserts, "the record is replete with testimony and evidence" supporting her claim as a victim of various forms of emotional abuse, she cites only one page in which she alleges emotional abuse without any description. The cited page represents her *argument* in the trial court that factors favored a modification of spousal support under section 4320. Thus, the assertion is not substantiated by evidence in the record.

We also reject Susanna's contention that the "tone and conclusions [in the statement of decision] are themselves abusive, inherently mocking [her] trauma and pain." The trial court's findings are objective and supported by substantial evidence. "When making a ruling, a judge interprets the evidence, weighs credibility, and makes findings. In doing so, the judge necessarily makes and expresses determinations in favor of and against parties. How could it be otherwise? We will not hold that every statement a judge makes to explain his or her reasons for ruling against a party constitutes evidence of judicial bias. [¶] '[W]hen the state of mind of the trial judge appears to be adverse to one of the parties but is based upon actual observance of the witnesses and the evidence given during the trial of an action, it does not amount to that prejudice against a litigant which disqualifies him [or her] in the trial of the action. It is his [or her] duty to consider

and pass upon the evidence produced before him [or her], and when the evidence is in conflict, to resolve that conflict in favor of the party whose evidence outweighs that of the opposing party. The opinion thus formed, being the result of a judicial hearing, does not amount to [improper] bias and prejudice . . . .' (*Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312.)" (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1219-1220.) The trial court's statement of decision does not display bias against Susanna.

E.

"Stereotypes and Innuendo"

Susanna contends Judge McAdam "resort[ed] to presenting a skewed image of [her] as mentally ill to accomplish this through stereotypes and innuendo." In particular, Susanna focuses on references by the trial court in the statement of decision to her mental health and erratic behavior. We conclude Susanna is estopped from advancing this argument.

In the trial court, Susanna argued for setting aside the judgment based on her assertions she "was (irrationally) astonished and wounded" that Kevin did not want to maintain "cooperation and friendship" after she filed her petition for dissolution of marriage. (Original parenthetical.) She alleged that during the process of negotiation and discovery: "I was now so emotionally overwhelmed, I was paralyzed." And Susanna sought relief in the trial court based on her declaration: "My emotional instability spiraled out of control, and I once again lost my composure in court – this time to such an extreme the bailiff repeatedly had to approach and warn me to stop." Susanna also introduced a letter from her psychologist, Dr. Stephen Tessler, that stated: "In recent months *I am observing noticeable deterioration in* [*Susanna's*] *emotional and behavioral state*. There is onset and *escalating suicidal ideation*, which is of concern. She has difficulties with emotional regulation in all subject matter relating to her divorce . . . . *I continue* [*to*] *advise her to discontinue representing herself in family law court in the*

matter of her divorce and seek representation of a qualified family law attorney. I write this with her understanding that *I would expect the judge to review this and the hope the judge will order her to discontinue representing herself in court.*" (Ellipsis, italics, and underscoring added in Susanna's declaration in support of the motion aside.)

The record indicates Susanna sought to establish duress in moving to set aside the judgment on the same grounds to which she now objects to the trial court having considered in ruling on her motion. Having introduced evidence of her mental health for the trial court to consider, she cannot now assert error in the trial court's consideration of that evidence. (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.)

F.

"Predisposition"

Susanna asserts Judge McAdam displayed a "predisposition to rule in [Kevin's] favor." This appears to be an assertion of judicial bias based on her citation of a case concerning judicial bias, i.e., *Webber v. Webber* (1948) 33 Cal.2d 153, 161.[3] On this record, the claim of bias in being predisposed to rule in Kevin's favor is nonmeritorious.

Susanna was given the opportunity to address the trial court during her motion to set aside the judgment even though she was represented by legal counsel during that hearing. In addressing the trial court, Susanna offered to drop the request for a

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[3] Although we resolve Susanna's contention as advanced in her argument heading, we note she also cites legal authorities concerning the deprivation of due process rights to notice and a hearing. In addition, she cites authority suggesting an argument based on the denial of her right to petition for redress of grievances. To the extent these cited authorities might be intended to frame additional arguments, they are forfeited for lack of any development beyond their conclusory assertions. "We are not required to examine undeveloped claims or to supply arguments for the litigants. (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 984-985; *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 546 [it is not the court's function to serve as the appellant's backup counsel].)" (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52.)

continuance to address the discovery issues. The trial court responded, and the following colloquy ensued:

"THE COURT: Let me address that point. On [Kevin's trial attorney], on the discovery, if something was requested and wasn't turned over, then I don't see why the Court shouldn't evaluate that and weigh that when determining the merits of the spousal-support issue.

"[Kevin's counsel]: Well, this is – this is –

"THE COURT: If I believe that it's particularly relevant.

"[Kevin's counsel]: Right, yeah.

"THE COURT: *I'm not interested in sanctioning anybody. I don't have a formal motion.*

"[Kevin's counsel]: Yes. . . ." (Italics added.)

Susanna argues the italicized portion of the trial court's comments reflected bias in Kevin's favor. However, we conclude Judge McAdam did not display a predisposition or bias by not sanctioning a party in the absence of a formal sanctions motion. Careful examination of Susanna's opening brief reveals she does not assert there was a pending formal sanctions motion. Instead, she believes the trial court's bias occurred because Judge McAdam simply "accepted [Kevin's] denials at face value." However, there was no objection by Susanna or her trial attorney on this ground. Indeed, the next time her trial attorney spoke after the colloquy recounted above, it was to agree Susanna was still interested in an equitable redistribution of marital debt. In the absence of an objection or any kind of statement the trial court had a sanctions motion before it to rule on, the argument has not been preserved for appeal. (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 406.)

G.

"Manipulation of Facts"

Susanna next contends Judge McAdam issued a statement of decision that "falsely portrays Judge Gaard as having 'treated [her] with respect . . . at all times,' " relied on "non-existent facts to portray Judge Gaard as sensitive and indulgent," and fabricated "out of whole cloth" findings related to earlier orders of Judge Gaard. We reject the contentions.

Numerous factual assertions underlie this argument, which is focused on factual findings of the trial court in its statement of decision. Regarding the statement of decision, and its factual findings in particular, we must presume the trial court's findings to be correct. A trial court's "judgment is presumed to be correct, and it is appellant's burden to affirmatively show error." (*In re S.C., supra*, 138 Cal.App.4th at p. 408.) And, "[w]here findings of fact are challenged on a civil appeal, we are bound by the 'elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below." (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660, quoting *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.) "Moreover, neither conflicts in the evidence nor ' "testimony which is subject to justifiable suspicion . . . justif[ies] the reversal of a judgment, for it is the exclusive province of the [trier of fact] to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." ' " (*Oldham v. Kizer* (1991) 235 Cal.App.3d 1046, 1065, quoting *Evje v. City Title Ins. Co*. (1953) 120 Cal.App.2d 488, 492.)

Judge McAdam issued a statement of decision in which he noted he "review[ed] the court record" before issuing his findings of fact. As pertinent to this issue, the statement of decision explains Susanna "recounts feeling pressured at the October 24, 2014 ex parte hearing. The transcript clearly reflects her erratic behavior. Even then

though, the trial judge granted her ex parte application. The transcript of the November 3, 2014 proceeding is markedly different, whereby [Susanna] appears much more calm and focused on the record. It is not lost also that [Susanna] had previously moved to continue the trial back in August – which was granted. In sum, over the several months leading up to the settlement, [Susanna] had made numerous procedural motions – all of which were granted by the trial judge."

We have reviewed the reporter's transcripts of the hearings conducted on October 24, 2014, and November 3, 2014. These transcripts constitute substantial evidence in support of Judge McAdam's findings Susanna appeared more calm and focused on the record on November 3, 2014, than in the earlier proceeding. During the earlier proceeding, the bailiff had to step in several times as Susanna continued to interrupt Judge Gaard. Susanna made faces at Judge Gaard and was seemingly unable to restrain herself from talking over the judge. During this earlier proceeding, Susanna ended up apologizing to Judge Gaard for being disrespectful the court. Throughout the proceeding on October 24, 2014, the record shows Judge Gaard demonstrated patience under trying circumstances.

The transcript of the hearing on November 3, 2014, stands in marked contrast. On that day, Susanna was accompanied by Attorney Jensen. Much of the hearing focused on moving the case to trial. The latter portion of the hearing began the exploration of whether the case could be settled, with all parties indicating the case should be settled. Susanna participated in the proceedings without any need for the bailiff to intervene, her statements in support of settlement were appropriate, and the trial court did not note any conduct such as Susanna's making faces or being agitated as it had during the earlier hearing. In short, the transcripts of the hearings on October 24 and November 3, 2014, support the trial court's factual findings in the statement of decision on the motion to set aside the judgment.

We reject Susanna's assertion regarding Judge Gaard's failure to rule on "substantive arguments" purportedly pending during these hearings. (Italics omitted.) Susanna does not identify these "substantive arguments" in her opening brief, nor does she attempt to show how Judge Gaard's failure to rule constituted prejudice as to the motion to set aside the judgment. (Italics omitted.) "We are not required to examine undeveloped claims or to supply arguments for the litigants." (*Allen v. City of Sacramento*, *supra*, 234 Cal.App.4th at p. 52.) The assertion is undeveloped and therefore forfeited.

II

Due Process

Susanna argues she was deprived of procedural due process by a "judicially-coerced waiver of right to present evidence." We reject this procedural due process argument.

In its statement of decision, the trial court noted it "made clear at the hearing that the parties were waiving any right to an evidentiary hearing. The Court had previously advised the parties to file witness lists and give notice of live testimony and *neither party did so*. There was an *agreement to submit the matter on the papers*, which was repeatedly confirmed on the record at the hearing." (Italics added.) This finding is supported by the reporter's transcript of the hearing on the motion to set aside the judgment.

On that date, Susanna was represented by Attorney Jensen. Jensen indicated he was prepared to submit the motion to set aside the judgment on the moving papers, declarations, and "multitude of documents that are already there." The trial court asked whether Jensen intended to introduce any live testimony in support of the motion, and Jensen responded: "I did not give notice to anyone because we've tried to eliminate live testimony and do it by declaration with attachments." Attorneys for both parties agreed

the best procedure would be to first address the motion to set aside the judgment and then address the request for modification of spousal support.

Jensen indicated he had not yet finished conducting discovery on the motion to set aside. The trial court asked why a hearing had been scheduled on an issue for which discovery had not yet been completed, and Jensen indicated the parties appeared in response to a court order. The trial court then addressed the claim for equitable redistribution of debt as follows:

"THE COURT: Well, and let me put it bluntly, [counsel], if you drop these [issues], then we don't have to worry about duress, and then we just go to spousal support, and you deal with change of circumstances, which is a legal standard we can all understand and move forward.

"Duress is a heavy burden for the Plaintiff here, and if – if you want to do that to get to this equitable redistribution credit debt, and I suppose – I suppose I'll hear the – I've seen the papers, but – [¶] . . . [¶]

". . . I'll hear the argument."

Immediately after making this comment, the trial court granted Jensen's request to let Susanna personally address the court. Susanna stated she would be willing to forego a continuance to complete discovery:

"Your Honor, unfortunately, it appears we don't have my initial declaration with us today, but I believe it addresses and requests all of the following relief. I can't say for sure because I don't have it, but what I had sought was – well, as a preliminary matter, I – I am – *I am happy to drop the request for a continuance to address the discovery issues*. If the Court will consider the abuses that we've outlined in – in that part of resolving my claim and particularly in the form of estoppel on some of things in the request.

"What I had asked for and I'm trying to find –" (Italics added.)

Thereafter, the trial court and counsel further addressed the discovery issue. Kevin's trial counsel represented to the trial court, "We provided everything we had or

could get." The court concluded the discovery matter by noting it would draw adverse factual inferences against Kevin if turned out he wrongfully withheld information from discovery. Neither Susanna nor her trial attorney objected to this ruling. Instead, the parties proceeded to move on to the merits of the set-aside motion. Susanna personally addressed the court to assert she had been pressured into accepting the MSA. The trial court summarized: "So I understand what you're saying, is that that particular term you are arguing was part of the intense pressure you were under, and so you're using that as evidence that there was duress because you had oral agreements and promises before . . . ." The following exchange then took place:

"THE PETITIONER: That's almost right, your Honor.

"THE COURT: Okay.

"THE PETITIONER: I have actually submitted evidence attached to my reply brief of Kevin stating that commitment [to pay limited college expenses] on the - - in sworn court documents.

"THE COURT: Okay. All right.

"THE PETITIONER: And then *the only other thing I'd just like the record to reflect* that it is utterly false that -- for him to assert that he's paying for all of [the] college expenses." (Italics added.)

In support of her procedural due process argument, Susanna cites *In re Marriage of Eustice* (2015) 242 Cal.App.4th 1291 (*Eustice*), *In re Marriage of Adkins* (1982) 137 Cal.App.3d 68 (*Adkins*), and *Smith v. Superior Court* (1996) 41 Cal.App.4th 1014 (*Smith*). None of these cases supports her assertion of a denial of procedural due process.

In *Eustice*, the Fourth District noted that " '[i]t is a fundamental concept of due process that a judgment against a defendant cannot be entered unless he [or she] was given proper notice and an opportunity to defend.' " (*Eustice*, *supra*, 242 Cal.App.4th at p. 1302.) Consistent with due process, the *Eustice* court noted defendants in California are guaranteed adequate notice of the maximum judgment that may be assessed against

them. (*Id.* at p. 1303.) In regard to marital dissolution actions, this rule precludes a trial court from awarding more than demanded in the dissolution petition. (*Ibid.*) Here, Susanna received a hearing in which both she and her trial attorney were able to assert her positions and arguments at length. Indeed, when given the opportunity to continue the hearing into the afternoon, Susanna's trial attorney *declined* the offer of additional time.

For similar reasons we reject Susanna's reliance on *Adkins*, *supra*, 137 Cal.App.3d 68. The *Adkins* court held that "a final judgment may be set aside upon a showing that extrinsic factors have *prevented* one party from presenting his or her case in court." (*Id.* at p. 75, italics added.) Here, nothing prevented Susanna from presenting her case in court. To the contrary, she received an extensive hearing on her motion to set aside the judgment. The fact that her attorney declined the invitation to extend the hearing refutes the assertion of inadequate procedural due process.

Finally, *Smith* does not mention due process at all. (*Smith, supra*, 41 Cal.App.4th 1014.) Instead, *Smith* held California courts are not required to recognize an out-of-state injunction under the full faith and credit clause of the United States Constitution where some of the parties to the California action had not participated in – or even received notice of – the out-of-state action. (*Smith*, at p. 1025.) The *Smith* court further noted the out-of-state proceeding disallowed key testimony. (*Id.* at p. 1026.) Here, however, the hearing on Susanna's motion did not include a request to introduce testimony. Instead, her attorney informed the court the motion was being submitted on documentary evidence. Based on this representation and in the absence of any objection on this ground, Susanna cannot fault the trial court for resolving the issues on documentary evidence.

III

Issues Related to the Statement of Decision's Discussion of Duress

A.

Ability to Resist Pressure

Susanna argues the statement of decision is inadequate because it "nowhere addresses [her] ability to resist pressure at the time of settlement." We conclude the argument has not been preserved for appeal.

In response to the statement of decision, Susanna articulated numerous objections in the trial court, including to the finding that "Judge [Gaard] did not pressure [her] into accepting [the] MSA." Similarly, she objected to the finding that the "pro tem [judge] did not pressure [her] into accepting [the] MSA." However, Susanna did not object to the statement of decision for failure to make a factual finding *on her ability to resist pressure* at the time the parties entered into the marital settlement agreement.

A party "must state any objection to the statement in order to avoid an implied finding on appeal in favor of the prevailing party." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133, fn. omitted.) Moreover, "objections to a statement of decision must be 'specific.' (*Golden Eagle Ins. Co. v. Foremost Ins. Co*. [(1993)] 20 Cal.App.4th [1372,] 1380.) The alleged omission or ambiguity must be identified with sufficient particularity to allow the trial court to correct the defect." (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 498.) In the absence of an objection to the omission of a required factual finding, the issue is forfeited for purposes of appeal. (*Arceneaux,* at pp. 1133-1134.)

B.

Rejection of Wife's Testimony

Susanna argues the statement of decision's "wholesale, unexplained rejection of [her] testimony" constitutes reversible error. Susanna further argues there was a "lack of

evidence supporting rejection of duress" and "multiple prejudicial legal errors regarding duress." We are not persuaded.

As a fundamental rule of appellate review, "the credibility of a witness and the weight to be accorded his [or her] testimony are questions directed to the trial judge, which under proper circumstances may accept all or such part of the testimony of any witness as he [or she] believes to be true, or may reject all or any part which he [or she] believes to be untrue." (*Wright v. Delta Properties, Inc.* (1947) 79 Cal.App.2d 470, 476.) Here, Susanna argues the trial court committed reversible error by giving her testimony insufficient consideration. "Clearly this whole argument is purely factual in character and cannot successfully be addressed to an appellate court." (*Id.* at p. 477.) Accordingly, we reject the argument.

C.

"Multiple Prejudicial Legal Errors"

In a catch-all argument, Susanna asserts Judge McAdam committed "multiple prejudicial legal errors regarding duress." Even while asserting multiple prejudicial errors, Susanna contends she need not show prejudice to secure a reversal. We disagree. As noted above, an appellant must show prejudice to secure a reversal. (Cal. Const., art. VI, § 13 [reversal only where error has resulted in miscarriage of justice]; Code Civ. Proc., § 475 [reversal only where error is prejudicial].) Because Susanna has not attempted to show prejudice, her claims cannot succeed. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)[4]

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[4] In reaching this conclusion, we note Susanna presents arguments regarding prejudice in her reply brief. However, as this court has previously held, "[a]rguments raised for the first time in the reply brief are untimely and may be disregarded." (*WorldMark, The Club v. Wyndham Resort Development Corp*. (2010) 187 Cal.App.4th 1017, 1030, fn. 7.) This holding also applies to other arguments tendered for the first time in the reply brief.

IV

Modification of Spousal Support

Susanna contends trial court's statement of decision is deficient "for failure to adequately discuss several relevant [section] 4320 [f]actors." We disagree.

A.

Section 4320

Section 4320 provides that "[i]n ordering spousal support under this part, the court shall *consider*" enumerated circumstances, including the parties' earning capacities, ability to pay support, needs based on the standard of living during the marriage, ability to engage in gainful employment, and other factors. (Italics added.) Section 4320 does not require the trial court to make any particular findings on the record or in a statement of decision. Instead, "a statement of decision 'need do no more than state the grounds upon which the judgment rests, without necessarily specifying the particular evidence considered by the trial court in reaching its decision.' " (*In re Marriage of Schmir* (2005) 134 Cal.App.4th 43, 50, quoting *Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1125, fn. omitted.)

Once a trial court considers the factors enumerated in section 4320, " 'the ultimate decision as to amount and duration of spousal support rests within its broad discretion and will not be reversed on appeal absent an abuse of that discretion. [Citation.]' " (*In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1480, quoting *In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 93.) Under the abuse of discretion standard of review, "[t]he test is not what order we would have made if one of us had been the trial judge. [¶] 'Our role as an appellate court is not that of factfinder; that is the role of the trial court.' (*In re Marriage of Prietsch & Calhoun* [(1987)] 190 Cal.App.3d [645,] 656.) The role of the appellate court is not to second-guess the trial judge." (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 493-494.)

B.

Adequacy of the Statement of Decision

Susanna asserts the statement of decision failed to adequately address the factors informing spousal support listed in section 4320, subdivisions (b) (contribution by supported party to education, training, career position by supporting party), (d) and (e) (needs of each party along with obligations and assets), (h) (age and health of the parties), and (j) (tax consequences to each party).

In addressing Susanna's request for modification of spousal support, the trial court engaged in 10 pages of factual findings and detailed analysis. As to contributions by Susanna to Kevin's education and career, Susann acknowledges the trial court expressly addressed this factor. However, she claims the trial court's discussion was inadequate. We disagree. The statement of decision indicates subdivision (b) of section 4320 was considered by the trial court and gave Susanna credit for supporting Kevin for part of the marriage. To the extent Susanna intends to assert error regarding the trial court's understatement of her contribution, the assertion of error is forfeited. (*Evans v. Centerstone Development Co.* (2005) 134 Cal.App.4th 151, 160 (*Evans*) [holding appellate court may disregard points raised in a footnote rather than properly presented under a discrete heading with appropriate analysis].)

Likewise, we reject Susanna's contention the statement of decision excludes her debts among her needs. In fact, the statement of decision devotes the better part of a page to the parties' needs and obligations – including express findings on wife's $80,650 in debt on 11 credit cards. The trial court found Susanna had funds available at the time of the dissolution to pay down this debt, but "[c]learly, [Susanna] chose not to do so and

instead chose to continue to live beyond her means." The statement of decision is sufficient in addressing the needs, assets, and obligations of the parties.[5]

The statement of decision contains a section titled, "Health of the Parties," in which the trial court addressed Susanna's health and age. The statement of decision's exploration of this factor reveals this factor received consideration.

Finally, we reject Susanna's contention the statement of decision only "vaguely acknowledges" tax benefits to Kevin while omitting "negative tax consequences" to her. She does not mention what these negative tax consequences might be, nor does she provide any record citation to where she pointed out to the trial court what these negative tax consequences might be. Accordingly, the contention is forfeited. (*In re S.C.*, *supra*, 138 Cal.App.4th at pp. 406-407.)

V

Denial of Need-based Attorney Fees

Susanna next argues the trial court's statement of decision is deficient because it did not make express findings on two of the three mandatory considerations set forth in section 2030, subdivision (a)(2).[6] We disagree.

Section 2030 requires the trial court to make findings when a party requests need-based attorney fees. " 'When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section is

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[5] In reaching this conclusion, we note Susanna's argument is presented as a challenge to the adequacy of the discussion of issues in the statement of decision, and not as a challenge to the sufficiency of the evidence.

[6] The only argument regarding need-based attorney fees supported by citations to legal authority and the appellate record concerns the sufficiency of the findings in the statement of decision. Any other argument that might be intended regarding need-based attorney fees is deemed forfeited for lack of adequate citation or development of the argument. (*In re S.C.*, *supra*, 138 Cal.App.4th at pp. 406-407.)

appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties.' (§ 2030, subd. (a)(2).) In determining whether to award attorney fees and costs in postdissolution proceedings, the trial court must consider ' "how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances." ' " (*In re Marriage of Shimkus* (2016) 244 Cal.App.4th 1262, 1279 (*Shimkus*), quoting *In re Marriage of Terry* (2000) 80 Cal.App.4th 921, 933.) The *Shimkus* court reversed a trial court order denying a request for attorney fees and costs merely by reciting there had been no showing of disparity in the parties' ability to pay for counsel, the party who had been requested to pay attorney fees was unable to afford counsel for both parties, and the fees and costs were not reasonable or necessary. (*Id*. at pp. 1279-1280.)

In contrast to the order in *Shimkus*, the trial court in this case made express findings that satisfied the requirements of section 2030, subdivision (a)(2). Here, the trial court's statement of decision explains as follows:

"The Court has carefully considered the respective financial circumstances and needs of the parties, and importantly, weighed all the factors under . . . sec. 4320. Pursuant to . . . sec. 2032 [subdivision] (b), it would not be just and reasonable to order fees in this case. The Court has done a thorough analysis and concluded that there was no basis for the motion. [Susanna] has a substantial income from which to pay fees, including $5,100 per month in spousal support and as much as $1,700 per month in other sources of income. She also was awarded separate property assets from the dissolution of the marriage, as set forth in the MSA. A party to a divorce action cannot claim a hardship and request fees under section 2030 by accruing debt at an unreasonable rate (here, 11 credit[] cards with a total balance over $80,000 plus personal loans). The Court must consider all equities."

The trial court's statement of decision made the findings required by section 2030, subdivision (a)(2). Specifically, the statement of decision (1) finds it inequitable to

award wife need-based attorney fees at the same time she as accrued debt at an unreasonable rate, and (2) Susanna had adequate resources to pay for her own attorney in light of her monthly income of more than $5,100 per month, $1,700 in earning capacity, and substantial assets received through the MSA. These findings that Susanna has sufficient resources to pay for her own attorney obviated the need to consider whether Kevin had the ability to pay for both parties' attorney fees. In short, the requirement of section 2030 that the trial court make findings upon request for need-based attorney fees was satisfied.

VI

Denial of Attorney Fees as Sanctions

In her final argument, Susanna asserts the statement of decision is inadequate because it "contains only one reference to [her] sanctions request." The reference on which Susanna focuses is the following sentence: "The parties' respective requests for attorney's fees as a sanction pursuant to [section] 271 is DENIED." We reject her argument.

Subdivision (a) of section 271 provides, in pertinent part, that "[i]n making an award pursuant to this section, the court *shall take into consideration* all evidence concerning the parties' incomes, assets, and liabilities." Thus, section 271 requires the trial court to take various factors into consideration but does not require the court to make specific findings on the record or in a statement of decision. Indeed, "[a] trial court is not required to issue a statement of decision for an attorney fee award." (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 981; accord *In re Marriage of Quay* (1993) 18 Cal.App.4th 961, 970 [noting an order on sanctions need not be made in writing].)

We also reject Susanna's assertion sanctions were warranted due to Kevin's conduct. The assertion is not presented under a separate heading with record citations in support. Accordingly, the assertion is forfeited. (*Evans, supra,* 134 Cal.App.4th at p. 160; *In re S.C.* (2006) 138 Cal.App.4th 396, 406-407.)

DISPOSITION

The order is affirmed. Respondent Kevin S. Mould shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/s/
HOCH, J.

We concur:

/s/
HULL, Acting P. J.

/s/
MURRAY, J.